

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2007

CORAM:

THE HON'BLE MR. JUSTICE M.E.N.PATRUDU

W.P.Nos.12920 & 12921 of 2006 &  
WPMP NO.14511, 14512, 14514 & 14515 of 2006

M/s.Waterfall Estate (East) Pvt. Limited  
Reg. Office New No.68, (Old NO.63)  
Cathedral Road, Gopalapuram  
Chennai - 500 086  
Rep. By its Director. ... Petitioner in W.P.No.12920/06

M/s.Waterfall Estate (West) Pvt. Limited  
Reg. Office New No.68, (Old NO.63)  
Cathedral Road, Gopalapuram  
Chennai - 500 086  
Rep. By its Director. ... Petitioner in W.P.No.12921/06

versus

1. The State of Tamil Nadu  
Rep. By the Secretary to Government  
Land and Administration  
Secretariat, Fort St. George  
Chennai - 600 009.
2. The District Collector of Coimbatore  
Coimbatore District  
Coimbatore - 641 018.
3. The District Registrar (Stamps)  
Tiruppur  
Coimbatore District.
4. The Chief Controlling Revenue Authority-cum-  
Inspector General of Registration  
120, Santhome High Road  
Chennai - 600 028. ... Respondents in both WPs

Petitions filed under article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records of the 4<sup>th</sup> respondent dated 14.03.2006 passed in D.Dis.No.61782/P

(1)/2003 and quash the same as the same being illegal, arbitrary and unconstitutional to the provisions of the Indian Stamp Act and Notification No.1224 dated 25.04.1964.

For Petitioners : Shri.Sathish Parasaran

For Respondents :Smt.C.K.Vishnupriya, G.A

#### COMMON ORDER

1.00 Whether remission of stamp duty for registering the document is permissible in the transfer of property between the parent and its subsidiary company?

2.00 The said common question is involved hence common order is pronounced in both the writs.

3.00 The forceful argument of Shri.Sathish Parasaran, the learned counsel appearing for the petitioner is that the petitioner is exempted from paying the stamp duty and can get the document registered as per notification issued by the state of Tamil Nadu and therefore the demand to pay the stamp duty is illegal and the order impugned is to be quashed.

4.00 If the said argument is accepted undoubtedly the writ petitions are to be allowed.

4.01 But the contention of the learned Government Advocate appearing for the respondents is that the notification is not applicable in the case of the petitioner's transaction. Hence the petitioner cannot claim any exemption under the notification.

5.00 Thus it is necessary to go into the details of the notification and the nature of notification and its application.

6.00 Before doing this exercise, the Court has to read the relevant facts.

#### 7.00 Facts:

(i) M/s.Kothari Industrial Corporation Limited transferred its two Tea Estates to two of its owned subsidiary companies by name

1)M/s.Waterfall Estate (East) Private Limited

2)M/s.Waterfall Estate (West) Private Limited

(ii) Both of them are private limited and wholly owned by petitioner. Two instruments of transfer dated 28.09.2001 and 30.11.2001 under Document Nos. 2558 of 2001 and 2582 of 2001 are executed in favour of the above two private limited company. The documents were presented before the Sub Registrar of Annamalai alongwith the other documents with certified copy of the annual returns, balance sheet, etc., and claimed the remission of stamp duty relying on the notification No.1224 issued by the Government of Tamil Nadu.

(iii) In brief the notification says that where the transfer takes place between the parent company and its subsidiary company and one of which is the beneficial owner of not less than 90% issued capital share it is entitled to remission of stamp duty.

(iv) The sub Registrar registered the document and accepted the instruments of transfer.

(v) While so, the audit objected.

(vi) Hence the District Registrar, Tiruppur had issued a show cause notice dated 13.02.2003 under section 33(A) of the Indian Stamp Act asking to show cause as to why Stamp duty should not be collected from the the petitioners.

(vii) The basis for issuing the said show cause notice is, to avail stamp duty remission under Notification No.1224, the transferor company should hold 90% of the issued Capital of the transferee company, and that the transferor company was holding less than 90% of the issued Capital and therefore the stamp duty remission was wrongly given.

#### 8.00 Case of petitioner:

(i) The contention of the petitioners is that there is misconception of law and leading of the provision of the company law Act. It is stated that there is no distinction between issued capital and subscribed capital, but there is difference between authorised capital on the one hand and issued subscribed capital on the other. It is staid that the law is well settled in this regard. Hence, the demand by the third respondent holding that the petitioners were not entitled to the remission of Stamp duty is incorrect.

(ii) When the petitioner appealed before the fourth respondent, the fourth respondent confirmed the earlier orders through the impugned order dated 14.03.2006.

(iii) The petitioners are challenging the legality and correctness of the said impugned order before this Court.

(iv) The main ground on which the petitioners is challenging are that the respondents did not properly appreciate the provisions of the Notification No.1224. It is non-application of mind by the respondents and Notification has to be read as a whole.

(v) It is contended that M/s. Kothari Industrial Corporation Limited is company and the petitioners' units are its subsidiary companies and the notification is applicable in the instant case.

#### 9.00 Counter:

(i) The respondents filed detailed counter.

(ii) It is stated that the deed of transfer executed by M/s. Kothari Industrial Corporation Limited in favour of M/s. Waterfalls Estate (West) Limited conveying the property in question for a consideration amount of Rs.11 crores and the duty borne by the deed is nil. However, the said sale deed was registered. Then Accountant General's audit noted the incorrect remission of stamp duty was accorded leading to loss of proper stamp duty and it is huge loss of revenue.

(iii) The forceful contention of the respondents is that the transferor company is not holding more than 90% of the issued share capital of the transferee company. Whereas, under the notification, the transferor company must hold more than 90% of the issue share capital of the transferee company. It is stated that the deed in question is not entitled for remission. Parent company is holding 100% in the subscribed and paid up share capital.

#### 10.00 Discussion on Point:

(i) Registration : The law of Registration is an important branch of law. The object and purpose of the registration of document is to give information to people regarding legal rights and obligations arising or affecting a particular property, and to, perpetuate document which may afterwards be of legal importance, and also may prevent fraud. Therefore, the object of registering document is to give notice to the world that such a document has been executed, to prevent fraud and forgery and to secure a reliable and complete account of transactions effecting the title of the property.

(ii) The Registration Act 1908 popularly known as Act No.XVI of 1864 laid down formalities which must be complied with before the document is presented for registration. The State Government shall prepare a table of fees payable for the registration of document.

(iii) Stamp Act : Indian Stamp Act deals with the instruments chargeable with duty and what are the nature of stamp duties.

(iv) The subject relating to stamp duty occurs at Entry 44 in list 3 of VII schedule of Constitution. The rates of stamp duty are provided in Entry 63 of List II.

(v) The Indian Stamp Act was enacted by Indian Parliament in exercise of Entry 44 List III.

(vi) The stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments, it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue.

(vii) In the fiscal statutes like stamp Act, the interpretation has to be according to strict letter of the law and not only in case of doubt but even in case of beneficial interpretation favouring the subject, the rule is to tend in favour of the subject. The sole object of the Indian Stamp Act is to increase revenue and its provisions must be construed as having in view only the protection of revenue. The provisions contained in the act impose pecuniary burdens as this act is a fiscal enactment.

(viii) In order to determine whether any, and if any, stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of the instrument is to be ascertained. It is a sound canon of construction that all parts of a document are to be read together and no portion can be read disjunctly or in isolation or omitted.

(ix) In order to interpret a provision or a notification which is neither ambiguous nor incomplete, the recitals in the said document ought to be generally the safe and sole guide for any interpretation.

(x) In B.Ratnamala Vs. Rudramma reported in AIR 2000 AP 167, the Division Bench of the Andhra Pradesh High Court has expressed the following view on interpretation of the provision under the Stamp Act at para 9.

" While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is one the execution of the deed, regard must, therefore, be had only to the terms of the document."

(xi) It is to be borne in mind that this Act with which at present I am concerned is as Act imposing liability for collecting stamp duty. The notification which I am dealing is fiscal in nature. Therefore, it must not only literally construed but must be strictly construed in order to find out whether a liability is fastened or not. The subject is to be taxed or not to be taxed and for that purpose and also that every Act of parliament or legislation must be read a wording to its natural construction of words.

(xii) Justice Rowlatt of England said long time ago, "that in a taxing act one has to look merely and fairly what is clearly said. There is no room for any intendment. There is no equities about a tax. There is no presumption as to tax. Nothing is to be read in. Nothing is to be implied. One has to look fairly at the language used. The question as to what is covered must be found out from the language, according to its natural meaning fairly and squarely read".

(xiii) Justice Krishna Iyer in Martand Dairy and Farm Vs. Union of India reported in AIR 1975 SC-1492 has observed that 'taxing consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian, interpretation must prevail'.

(xiv) Therefore, to find out the intention of legislature if possible it should be found out from the language employed and in case of doubt, the purpose of legislation should be sought for to clarify the ambiguity only if any. Thus it is time to note the language in the notification.

(xv) Notification"-

The said notification is extracted below:  
"(38) Instrument evidencing transfer of property between companies limited by shares as defined in the Companies Act, 1956, in a case where (i) at least 90% of the Issued Share Capital of the transferee company is in the

beneficial ownership of the transferor company, or (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90% of the issued share capital of the other or (iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company.

Provided that a certified copy of the relevant records of the Companies kept in the office of the Registrar of Companies, Madras, is produced by the parties in the instrument to prove that the conditions above prescribed are fulfilled."

(xvi) Plain reading of the notification discloses when ever there is transfer of property between the companies limited by shares and in a case where atleast 90% of the Issued Share Capital (Emphasis supplied) of the transferee company is in the beneficial ownership of the transferor company or where the transfer takes place between a parent company and the subsidiary company which is in a beneficial ownership of not less than 90 per cent of the Issued Share Capital of the other. Then only, the remission will apply. Therefore, the State in its wisdom has issued a notification as mentioned supra through item No.38 dealing with reductions and remissions in respect of payment of stamp duty, that the remission will apply only to cases of transfer of properties between two as mentioned in the notification.

(xvii) As the Court has already indicated that in a case of fiscal nature true meaning of the statute is to be taken into consideration and there is no scope for any interpretation.

(xviii) Shri.Sathish Parasaran, learned counsel appearing for the petitioner forcefully contended that the notification is to be read for the benefit of the parties and beneficial owner becomes eligible to the rights when the shares get subscribed from out of the issued share capital. Hence, it should be construed that the issued share capital means subscribed share capital.

(xix) It is also contended that the issued share capital break up is the amount approved by the shareholders for issue and allotment to the persons subscribing to the said issued capital of the company and it means Directors of the company has power to issue and allot shares to the subscribers up to that nominee value of the issued capital and the entire nominal value which is essential requirement to be fulfilled under the notification in order to become eligible for stamp duty exemption.

(xx) It is also forcefully contended that beneficial owner becomes eligible to the rights only when the shares get subscribed from out of the issued share capital. Hence, it should be construed that the issued share capital means subscribed share capital.

(xxi) It is stated that break up figures of the shares capital are shown and the same are also dealt by the 4<sup>th</sup> respondent in the impugned order.

(xxii) Perused the impugned order. The Inspector General of Registration who is the Chief Controlling Revenue Authority has passed the impugned order on 14.03.2006, while considering the revision petitions of the petitioners herein, questioning the orders of the District Registrar who is the 3<sup>rd</sup> respondent demanding payment of stamp duty. The description of the documents are furnished in the orders. In para 3 of the order, it is clearly stated that as per Document NO.2558 of 2001 out of the issued share capital of 90,350 shares of the Transferee Company only 14,500 shares were paid and subscribed and out of that the Transferor company i.e. the parent company is holding only 14,493 shares. Similarly, as far as Document No.2582 of 2991, out of the issued share capital of 35,350 shares of the Transferee Company only 8,850 shares were paid and subscribed and out of the Transferor company i.e. the parent company is holding only 8,585 shares.

(xxiii) By noting the above, the 4<sup>th</sup> respondent has come to a specific conclusion that the holding of the issued share capital of the Transferor Company is 14,493 shares under in one transaction and 8,585 shares in other transaction. Hence, the 4<sup>th</sup> respondent came to a definite conclusion that the condition laid down in the notification issued in G.O.Ms.No.1224/Revenue, dated 25.04.1964 and G.O.Ms.No.37/CT & RE Department dated 25.01.1995 for according remission of transfer duty is that atleast 90% of the issued share capital of the transferee company is in the beneficial ownership of the transferor company and since 90% of the issued share capital of the transferee company is not held by the transferor company, the petitioner is liable to pay the stamp duty.

(xxiv) I do not find any irregularity or illegality in the impugned order. It is a reasoned order. In the case of registration of payment of stamp duty the real and true meaning of instrument is to be ascertained to determine whether the stamp duty is to be chargeable and what stamp duty is to be demanded upon instrument.

(xxv) The Supreme Court of India in various cases like AIR 1977 SC 500 clearly held that in order to determine whether any, and if any what stamp duty is chargeable upon an instrument, the real and true meaning of the instrument is to be ascertained for description of it given in the instrument itself. The Full Bench of Madras High Court in AIR 1975 - 161 clearly held that when a question arises whether a document should be chargeable or not, the first thing to be looked into is the document itself in order to determine the character thereof. Therefore, the recitals of the document should not be lost sight and all parts of the document has to be read together and it is a sound cannon of construction that all parts of the document are to be read together, no portion can be read disjunctily or in isolation or omitted and the Revenue Authorities cannot ignore recitals and terms of document in order to interpret a document which is neither ambiguous nor incomplete and the recitals in the said document ought to be generally accepted and there is no further necessity to interpret in a different way. Therefore, the contention of the counsel for the petitioner that issued share capital must be treated as subscribed share capital is unacceptable.

(xxvi) Shri.Sathish Parasan, while highlighting the arguments stated that sections 397, 398 and 399 of the Companies Act deals with the issue, It is not correct, They are with application for relief in case of Oppression and application in case of Mismanagement and right to apply under sections 397 and 398. They are nothing to do with the issue before us.

(xxvii) The learned counsel also cited a decision reported in Re Vs Albert David Limited 68 C.W.N.-163. It is a case disposed of under the Companies Act 1956 under section 397, 398 and 399 and while dealing with a matter under the companies Act, there was detailed discussion on facts with regard to averments in the petition and nature of verification, circumstances justifying exercise of court's discretion and appointment of administrator. In the above case the priority under section 399 of the Act, the right to apply under section 397 and 398 is gone into, inter alia, to members holding not less than one tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares. In the course of discussion it is noted at page 170 that whether shares not actually issued i.e. subscribed and paid for are to be considered Issued Share Capital within the meaning of section 399 of the Act is the actual subscribed capital. Therefore, there was no interpretation under the Companies Act what is meant by Issued Share capital and what is meant by Subscribed Share Capital.

(xxviii) The facts and circumstances and the findings in the above case are not at all applicable in the case before me. In this case, we are dealing with the payment of stamp duty by the petitioners for registration of the document and the very object of the stamp Act is fiscal measure enacted to secure revenue of the State on certain classes of instruments. I have highlighted that in a case of such statutes, the real and true meaning of the instruments, the provision and the notification must be taken and there is no scope for any interpretation.

19.00 For all the foregoing reason, I hold that there are no merit in the writ petitions. Therefore, the impugned order is upheld and the writ petitions are dismissed. No costs.

rj

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government  
Land and Administration  
Secretariat, Fort St. George  
Chennai - 600 009.
2. The District Collector of Coimbatore  
Coimbatore District, Coimbatore - 641 018.
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4. The Chief Controlling Revenue Authority-cum-  
Inspector General of Registration  
120, Santhome High Road  
Chennai - 600 028.

+ 2 ccs to Government Pleader SR No. 8720, 8121  
+ 1 cc to M/s. Satish Parasaran, Advocate SR No. 8162

Order in  
W.P.Nos.12920 & 12921 of 2006

AVA(CO)SR/15.2.2007